Ormiston contends that the Butte County action did not violate the automatic stay in that Prater had obtained his discharge in his bankruptcy action prior to the time the Butte County Action was filed. In addition, the property at issue was abandoned and was no longer property of the bankruptcy estate at the time the Butte County Action was filed.

Under 11 U.S.C. §362(c)(2), the automatic stay continues until the earliest of one of three events: (1) the time the bankruptcy case is closed; (2) the time the bankruptcy case is dismissed; and (3) the time a discharge is granted to the debtor. In this case, it is undisputed that Prater obtained his discharge on June 5, 2000. Under 11 U.S.C. §362(c)(2)(C), the stay no longer continues after that date. The Butte County Action at issue was not filed until April 25, 2002. Therefore, Prater could not and cannot state a claim for violation of the automatic stay and the action was properly dismissed.

In addition, 11 U.S.C. §362(c)(1) provides that the automatic stay of an act against the property of the estate

continues until such property is no longer property of the estate. Here, the property was no longer property of the estate at the time the Butte County Action was filed because the Bankruptcy Trustee abandoned the property in December 2000 pursuant to the Trustee's motion to abandon real property, which was granted on December 19, 2000. Accordingly, the property was no longer property of the bankruptcy estate when the Butte County Action was filed on April 25, 2002 and Prater's action was properly dismissed.

VI.

ARGUMENT

Prater attempts to confuse and mislead the court by inserting several red herrings in his Petition, such as repeatedly highlighting the fact that he is a *pro se* litigant, citing the general rules of notice pleading, and making false statements about Ormiston and his counsel. However, this is a straightforward case with simple issues. This is merely an action for a violation of the bankruptcy automatic stay. For the

reasons set forth below, the Butte County Action did not violate the automatic stay because Prater had obtained his discharge prior to the filing of the Butte County Action and because the Clipper Mills property had been abandoned prior to the filing of the Butte County Action.

A. Prater Fails To Cite Compelling Reasons For Granting The Petition For Writ Of Certiorari.

Rules of the Supreme Court of the United States, Rule 10, provides that "review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A Petition for a Writ of Certiorari will be granted only for compelling reasons." Rule 10 then lists several considerations governing whether the court should grant a Petition for Writ of Certiorari, stated as follows:

> (a) A United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision of a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as

to call for an exercise of this court's supervisory power.

Moreover, this Court specifically held that a Writ of Certiorari will not be granted except in cases "involving principles the settlement of which is of importance to the public as distinguished to that of that parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal." *Layne & Bowler Corporation v. Western Well Works, Inc.*, 261 US 387, 393 (1923); *National Labor Relations Board v. Pittsburgh Steam Ship Co.*, 340 US 498, 502-503 (1951).

Here, Prater does not contend that this case presents a case of great public importance. He does not contend that there is a split of authority between the circuit courts of appeal. In fact, Prater does not assert one reason the Court should grant his Petition for Writ of Certiorari other than the fact that he disagrees with the lower courts' rulings.

It is also important to note that Prater's Petition for Writ of Certiorari, with the exception of several revised headings and

the insertion of additional introductory language, is identical to his opening brief in the Ninth Circuit Court of Appeal, virtually on a word-for-word basis. In short, Prater simply seeks a third bite at the apple. This action presents no issue of great importance to the public, nor does it involve an issue in which there is a split of authority among any circuit courts of appeal. For these reasons, as well as the reasons set forth below, the Petition should be denied.

B. Prater Obtained His Discharge On June 5, 2000.

11 U.S.C. §362 provides that the filing of a bankruptcy petition operates as an automatic stay prohibiting any action against the debtor or property of the bankruptcy estate during the pendency of the bankruptcy action. However, there are exceptions to this general rule. 11 U.S.C. §362(c)(2) provides that the stay in any action continues until the earliest of (1) the time the bankruptcy case is closed; (2) the time the bankruptcy case is dismissed; or (3) the time a discharge is granted to the debtor.

Here, there is no dispute that Prater obtained his discharge on June 5, 2000. Prater does not dispute this fact. Instead, he attempts to divert the Court's attention to 11 U.S.C. §362(c)(1), which provides that the stay of an action against property of the estate continues until such property is no longer property of the estate. (As set forth below, the Butte County Action did not violate the automatic stay because the property was no longer property of the estate). However, the Butte County Action is not an action against the property of the estate. The District Court noted as much. At the hearing on Ormiston's Motion to Dismiss, the Court correctly noted that this case should be decided by several undisputed dates:

> The Court: I have reviewed the parties' filings. It seems to me this motion comes down to two key facts, and I want to make certain that I've got those facts straight. If I review pleadings, and the Exhibits submitted, I understand that there's no dispute as to the date of discharge being June 5th of 2000, is that correct?
>
> Mr. Prater: Yes, your honor.
>
> Mr. Williams: I'm sorry, I didn't hear

you.

Mr. Prater: Yes.

The Court: He said, yes.

Mr. Williams: Yeah, no dispute there.

The Court: And secondly, although there was a typographical error in the original moving papers, there's no dispute that the state complaint was filed on April 25, 2002.

Mr. Prater: That's correct, your honor.

Mr. Williams: That's correct.

The Court: Okay. I think those are the two key facts, and there's a statute that clearly provides for a stay being lifted once discharge is entered.

In looking at the substance of the complaint in the Butte County Action, it is clear that the Butte County Action is not an action against the property of the estate. The only allegation regarding Prater's property is one cause of action in which Ormiston seeks to quiet title to an easement across Prater's property. Ormiston does not seek fee title to any portion of Prater's property, as Prater contends. The remaining causes of

action relate to Prater's acts of interference with Ormiston's use of the easement, all of which occurred long after Prater filed his bankruptcy case and also after he obtained his discharge. The complaint also seeks to quiet title to Prater's alleged easement across the Ormiston property. Ormiston does not seek to obtain possession or property of the estate or to exercise control over property of the estate. He merely sued Prater as an individual because Prater interfered with Ormiston's easement.

The Butte County Action is simply an interference with an easement case. Prater is under the mistaken belief that since he filed bankruptcy he is free to do whatever he wishes without consequence as long as his bankruptcy case is open. That is not the case. Pursuant to 11 U.S.C. §362(c)(2), the automatic stay prohibiting actions against Prater as an individual terminated on June 5, 2000, the date he obtained his discharge. The Butte County Action was filed on April 25, 2002. Accordingly, the Butte County Action did not violate the automatic stay and the motion to dismiss for failure to state a claim was properly

granted.

C. The Clipper Mills Property Was Abandoned Before the Butte County Action Was Filed.

Prater goes to great length arguing that the Clipper Mills property was property of the bankruptcy estate. Ormiston does not dispute that the Clipper Mills was at one time property of the estate. However, the Butte County Action is not an action against property of the estate. Notwithstanding, even if Ormiston concedes that the Butte County Action is in some way an action against property of the bankruptcy estate, the Clipper Mills property was no longer property of the estate when the Butte County Action was filed on April 25, 2002. 11 U.S.C. §362(c)(1) provides that the automatic stay of an act against property of the estate continues until such property is no longer property of the estate. Here, the property was no longer property of the estate at the time the Butte County Action was filed because the bankruptcy trustee abandoned the property in December 2000.

On December 4, 2000, the Bankruptcy Court granted the

bankruptcy trustee's Motion For Approval of Compromise and Transfer of Real Properties. In its order, the Bankruptcy Court approved the settlement agreement attached to the order as Exhibit "A". The settlement agreement states that the Clipper Mills property was listed in Prater's initial bankruptcy schedules. The settlement agreement also states that the bankruptcy trustee concluded that he could not sell the Clipper Mills property, as well as other properties, for an amount sufficient to pay all of the encumbrances on the property. Therefore, the trustee filed a motion to abandon the properties. The agreement also states that "Abandonment would return the Properties to the ownership and control of W. Prater, and would terminate the automatic stay of 11 U.S.C. section 362 with respect to the Properties. The Abandonment Motion has not been heard."

On December 19, 2000, the Bankruptcy Court granted the bankruptcy trustee's motion to abandon real property, which real property included the Clipper Mills property involved in

the Butte County Action. Accordingly, the Clipper Mills property was abandoned as of December 19, 2000. Prater will argue that the Bankruptcy Court's order merely authorized the Trustee to abandon the property and that the trustee did not abandon the property until his bankruptcy case was closed. However, there is no required form necessary to abandon property. The abandonment was effective on the date the bankruptcy court granted the order abandoning the property in that there was nothing left for the trustee to do.

Moreover, the bankruptcy trustee filed his Final Report and Proposed Distribution of the bankruptcy estate on May 2001. His final report lists all assets and property of the estate. The trustee's final report does not list the Clipper Mills property as an asset of the estate, in contrast to Prater's initial bankruptcy schedules, which did list the Clipper Mills property as an asset of the estate. Rather, the only real property listed in the trustee's final report as an asset of the estate is the "Gibsonville property". As the Court will note, there is no

mention of the Clipper Mills property in the trustee's final report, indicating that the property was no longer property of the bankruptcy estate. Thus, even if the court's order dated December 19, 2000, did not officially abandon the Clipper Mills property, clearly the trustee had done whatever Prater believes was necessary to abandon the Clipper Mills property prior to May 2001 when he filed his final report listing the property of the estate. Therefore, the property was clearly abandoned as of May 2001, when the bankruptcy trustee filed his final report which did not include the property as property of the bankruptcy estate.

Prater also attempted in the District Court to introduce a declaration from his bankruptcy trustee purportedly filed in the Butte County Action. The District Court held that "the declaration is not a matter for judicial notice." Prater alleges that the District Court erred when it denied his request for judicial notice. First, the declaration submitted by Prater does not appear to have been filed in the Butte County Action in that

the declaration does not contain a "filed" or "endorsed" stamp. While courts may take judicial notice of pleadings of other courts, this declaration does not appear to be a pleading of another court. In addition, the facts stated in the declaration are disputed facts and a court cannot take judicial notice of disputed facts. Federal Rule of Evidence 201. Rule 201(b) provides as follows:

> A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably questioned.

In *United States of America v. Decker*, 600 F.2d 733, 739 (9th Cir. 1979), the defendant moved under Rule 201 that the court take judicial notice of testimony of the Assistant Director of the International Pacific Salmon Fisheries Commission given in several other criminal cases in which the defendants challenged regulations promulgated by the Department of the Interior. The court held that the proffered testimony was merely opinion

testimony that was in reasonable dispute because it was not "generally known" or "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." (*Id.* at p. 739). Similarly here, the proffered declaration of the bankruptcy trustee contains mere opinion that is in reasonable dispute, i.e., when the Clipper Mills property was abandoned. Accordingly, the District Court correctly denied the request for judicial notice.

In addition, whether Prater's request for judicial notice should have been granted is irrelevant because the bankruptcy trustee's declaration has no bearing on whether the property was actually abandoned prior to the Butte County Action. It is irrelevant when the trustee believes the property was actually abandoned because, as set forth above, the Butte County Action is an action against Prater as an individual and not against the property of the estate. Moreover, even if the Butte County Action is an action against property of the estate, the bankruptcy trustee does not deny that the property was no

longer listed as property of the estate in May 2001 when he filed his final report. Neither Prater nor the bankruptcy trustee can circumvent the documents that were actually filed in the court in the bankruptcy action. According to the files of the bankruptcy action, the property was not property of the estate in May 2001 when the trustee filed his final report, and thus was not property of the estate when the Butte County action was filed on April 25, 2002. Accordingly, even if the District Court should have granted the request for judicial notice, the court at best committed harmless error in that the proffered evidence was irrelevant.

D. The Action Should Have Been Filed In the Bankruptcy Court.

In his action, Prater alleges a private cause of action for a purported violation of the automatic stay. 11 U.S.C. §362 provides that an individual injured by any willful violation of the automatic stay shall recover damages. The automatic stay is an automatic injunction and any person who violates this stay may be found in contempt of court. See *Carver v. Carver*, 954

F.2d 1573, 1576 (11th Cir. 1992). However, any action for violation of the automatic stay should be brought into Bankruptcy Court. *Pereria v. First North American National Bank*, 225 BR 28, 31 (N.D. GA 1998); see also *Hallas v. Platek*, 239 BR 784, 792 (N.D. IL 1999) (on appeal from Bankruptcy Court, U.S. District Court held that a request for sanctions under §362 for violation of an automatic stay is "within the exclusive jurisdiction of the Bankruptcy Court...").

An action for violation of the automatic stay is analogous to actions involving claims for relief under 11 U.S.C. §524 for violation of the discharge injunction. In those cases, the Ninth Circuit has held that there is no private cause of action and the traditional remedy for violation of an injunction lies in contempt proceedings in the Bankruptcy Court. See *Wall v. Wells Fargo Bank, N.A.*, 267 F.3d. 502, 507 (9th Cir. 2002). Similarly, any action alleging a violation of the automatic stay should also be brought in the Bankruptcy Court and not other federal courts or state courts. Accordingly, the District Court's

judgment should be affirmed on the grounds that Prater filed his action in the wrong court.

E. Prater Should Not Have Been Granted Leave To Amend.

Prater goes to great lengths in his opening brief arguing that under the general principles of notice pleading, he should have been granted leave to amend his complaint. First, Prater states that the District Court's order dismissing the action is ambiguous in that it does not state whether the case is being dismissed with or without prejudice. However, Federal Rule of Civil Procedure 41(b) states that a dismissal for failure to state a claim operates as an adjudication on the merits and is therefore a dismissal with prejudice unless the court orders otherwise. Here, the court did not order otherwise and therefore the action was dismissed with prejudice.

While it is true that pleadings are to be construed liberally in favor of the pleader, leave to amend does not need to be granted when the amended complaint would not withstand a motion to dismiss for failure to state a claim. *Lewis v. Fresne*,

252 F.3d 352, 360 (5th Cir. 2001). See also *Qualcomm, Inc. v. Motorola, Inc.*, 989 F. Supp 1048, 1050 (S.D. Cal 1997); *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991). A District Court does not err in denying leave to amend where the amendment would be futile and the amended complaint would be subject to dismissal. *Reddy v. Litton Indus, Inc.*, 912 F.2d 291, 296 (9th Cir. 1990); *Moore v. Kaycort Package Express, Inc.*, 855 F. 2d 531, 538 (9th Cir. 1989). Moreover, while Prater is a *pro se* litigant and may be entitled to some leniency in his pleadings, even *pro se* pleadings must meet some minimum threshold in stating a claim. *GJR Investments, Inc. v. County of Escambia, Florida*, 132 F. 3d 1359, 1369 (11th Cir. 1998). ("Yet even in the case of *pro se* litigants this leniency does not give a court license to serve as *de facto* counsel for a party [citation omitted], or to rewrite an otherwise deficient pleading in order to sustain an action [citation omitted]").

As set forth above, there is no amendment to Prater's complaint that can cure the failure to state a claim against

Ormiston. The automatic stay had been terminated at the time the Butte County Action was filed. There are no new additional or new facts upon which Prater can allege that the Butte County Action violated the automatic stay. There are no facts to dispute that Prater obtained a discharge on June 5, 2000. There are no facts to dispute that the Bankruptcy Court granted the Trustee's motion to abandon the Clipper Mills property on December 19, 2000. There are no facts to dispute the fact that the Clipper Mills property was not listed as property of the estate when the Trustee filed his final report in May 2001. Finally, there are no facts to dispute that the Butte County Action was not filed until April 25, 2002. Prater is confusing the motion to dismiss for failure to state a claim with a motion for more definite statement under Federal Rule of Civil Procedure 12(e). Under F.R.C.P. 12(e), a party may move for a more definite statement if a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading. Prater also cites Federal Rule of Civil

Procedure 8(a) and argues that the Federal Rules requires only a short and plain statement of the claim. However, the District Court did not grant Ormiston's motion to dismiss on the grounds that the complaint was vague and/or uncertain. On the contrary, Prater's complaint is very specific as to his contentions. The District Court dismissed the action because under no circumstances can Prater allege that the Butte County Action violated the automatic stay since the automatic stay had been terminated. Accordingly, the District Court did not err when it refused to grant Prater leave to amend his complaint.

VII.

ORMISTON IS NOT A PROPER DEFENDANT

Prater alleges in his action that Ormiston violated the automatic stay by filing the Butte County Action. However, Ormiston is not the plaintiff in the Butte County Action. The Butte County Action was filed by the Ormiston Family Association. There is no evidence in the record that David C. Ormiston, Jr., the named defendant in this action, filed the

Butte County Action. Thus, Ormiston could not have violated the automatic stay because he did not file the complaint.

VIII.

CONCLUSION

Based upon the forgoing, Respondent Ormiston respectfully requests that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

Date: September 15, 2005

Michael R. Williams, Esq.
Hefner, Stark & Marois, LLP
2150 River Plaza Dr., Suite 450
Sacramento, CA 95833
(916) 925-6620
Counsel for Respondent
David C. Ormiston, Jr.

No. 05- 149

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In the Supreme Court of the United States

WILLIAM J. PRATER

Petitioner,

v.

DAVID C. ORMISTON JR.

Respondent.

On Petition for a Writ of Certiorari To the United States Court of Appeals For the Ninth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

William J. Prater
Post Office Box 23
Clipper Mills, California 95930
(530) 675-2678
Pro Se

Counsel for Petitioner William J. Prater

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REPLY BRIEF

INTRODUCTION

On April 25, 2002 Respondent David C. Ormiston Jr. an absentee landowner acting in concert with others filed or caused to be filed a frivolous lawsuit against several senior citizens who lived in the small village of Clipper Mills California located in the Sierra Nevada Mountains. This came as no surprise because it was a continuing course of conduct by Mr. Ormiston in that he has a criminal history regarding elder abuse.

On April 25, 2002 one of the senior citizens this Petitioner William J. Prater regrettably was involved in a Bankruptcy Case in the Eastern District of California Sacramento California because of a longstanding family law dispute. This family law dispute was resolved by a settlement agreement in the Bankruptcy Court, which is addressed later in this brief.

Ormiston failed to file his complaint against William J. Prater in the Bankruptcy Court as an adversary proceeding, which is required by law, nor did he obtain a relief of stay from the Bankruptcy Court to file the lawsuit in State Court.

William J. Prater consulted with the Bankruptcy Judge in open court as to the propriety of filing a complaint against Mr. Ormiston for violating an injunction of the Federal Court, (11 U.S.C. § 362).

The Bankruptcy Judge stated in open court that under the circumstances a complaint for willful violation of the automatic stay would be in order.

After consulting with the Bankruptcy Judge William J. Prater sent counsel for Ormiston two different letters requesting that he dismiss the State Court lawsuit because he was in violation of the Bankruptcy Court's injunction namely (11 U.S.C. § 362).

The State Court Judge upon learning of the Bankruptcy Petition requested counsel for Ormiston to dismiss the State Court action but Ormiston refused. Repeated attempts to settle the matter outside the courtroom failed and subsequently William J. Prater filed a complaint in the United States District Court Eastern District of California for a willful violation of the Automatic Stay of 11 U.S.C. § 362.

REASONS FOR GRANTING THE WRIT

I. THE LOWER COURTS ERRED WHEN THEY FAILED TO INTERPRET STATUTES OF THE UNITED STATES ACCORDING TO THEIR TERMS AND PLAIN MEANING, WHICH RESULTED IN A MISCARRIAGE OF JUSTICE.

Certiorari is warranted because the decisions of the 9th Circuit and the United States District Court are wrong on their merits and violated basic principles of statutory construction.

The United States Court of Appeals for the Ninth Circuit and the United States District Court Eastern District of California erred when they incorrectly interpreted statutes of the United States namely 11 U.S.C.§ 362 (c)(1) and 11 U.S.C. § 362 (a), which resulted in erroneous decisions.

These statues were and are of national importance to a large segment of the population, not just this petitioner.

A. Respondent's Federal Rule of Civil Procedure 12 (b)(6) Motion

The hearing on Respondent's motion to dismiss William J. Prater's complaint filed in the United States District Court Eastern District of California was heard on

October 29, 2003 before the United States Magistrate Judge Kimberly J. Mueller.

Judge Mueller mistakenly interpreted a statute of the United States 11 U.S.C. § 362 (c)(1) erroneously ruling that the Automatic Stay of 11 U.S.C. § 362 does not continue after the granting of a discharge in a Bankruptcy Case. See Pet. App. 4a.

This decision was clearly erroneous and a miscarriage of justice due to the fact that the granting of a discharge does not terminate the Automatic Stay of 11 U.S.C.§ 362 as to property of the estate as defined 11 U.S.C. § 541.

This decision was erroneous and an abuse of discretion in that it is in direct conflict with existing Federal Law namely 11 U.S.C. § 362 (c)(1) Pet. Br. 15, See also Pet App. 12a

A court abuses its discretion when "its decision rests on an error of law (such as application of the wrong legal principle) or a clearly erroneous factual finding, or ... its decision – through not necessarily the product of a legal error or a clearly erroneous factual finding – cannot be located within the range of permissible decisions." *Wynder v. McMahon*, 360 F.3d 73 (2d Cir. 2004)

Petitioner's complaint was dismissed in the United States District Court because the Court erroneous ruled that the granting of a discharge in a Bankruptcy Case terminates the Automatic Stay of 11 U.S.C.§ 362.

This decision conflicts with Supreme Court precedent and violates the doctrine of *stare decisis* in that the Supreme Court has already ruled many times that the Court should interpret a statute according to its terms and its plain language. *Ron Pair Enterprises Incorporated* 489 U.S. 235, 241-242 (1989).

The United States District Court erred when it did not interpret statutes of the United States according to their terms and plain language.

The United States Court of Appeals for the Ninth Circuit erroneously affirmed the decision of the United States District Court based on the fact that the granting of a discharge terminates the Automatic Stay of 11 U.S.C.§ 362.

This Court should grant Certiorari based in part on the fact that this was extreme departure from the excepted and usual course of judicial proceeding in not interpreting a statute according to its plain meaning.

In addition, the decision of the United States District Court in the Ninth Circuit is inconsistent with the United States Supreme Court precedent for this Court has decided long ago that the Court must presume that a legislature says in a statute what it means and means in a statute what it says. *United States v. Goldenberg* 168 U.S. 95 102-103 (1897), *Oneale v. Thornton* 6 Cranch 53, 68.

The relevant and controlling statute as to when the Automatic Stay terminates is 11 U.S.C. § 362 (c)(1), which states in pertinent part "The stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;" See Pet. App. 12a. William J. Prater's property remained property of the estate until the closing of the case when it was abandoned by operation of the law pursuant to 11 U.S.C. § 554 (c). See Pet App. 28a –31a

Knowing better Respondent Ormiston attempts to mislead this court into believing that the granting of discharge terminates the Automatic Stay in a Bankruptcy Case. See Opp. Br. 3.

II. BASED ON EXISTING FEDERAL APPLICABLE LAW IT IS A LEGAL IMPOSSIBILITY FOR PETITIONER'S COMPLAINT FILED IN THE UNITED STATES DISTRICT COURT TO BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED.

Respondents contend that it was appropriate for the United States District Court to dismiss a pro se litigant's complaint without leave to amend under Federal Rule of Civil Procedure 12 (b)(6) for failure to state a claim.

The decision to dismiss a pro se litigant's complaint at the pleading stage is in direct conflict with decisions of the Supreme Court of the United States and of every Circuit Court. See *Conley v. Gibson* 355 U.S. 41, 45-46, 2 L. Ed.2d 80, 78 S. Ct. 99 (1957), *Haines v. Kerner*, 404 U.S. 519, 520, 21 (1972) *Richardson v. Fleming*, 651 F.2d 366, 368 (5th Cir. 1981) *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987) ..... Citations omitted.

Despite their efforts to distance themselves from the facts a Federal Rule of Civil Procedure 12 (b)(6) motion is looked on by disfavor by Courts and are rarely granted.

The main reason for this disfavor is the basic precept that the primary objective of law is to obtain a determination on the merits of the claim and that accordingly a case should be tried on the proofs rather than on the pleadings.

III. THE COURT SHOULD GRANT THE WRIT TO CONCLUSIVELY DETERMINE THE RIGHTS OF PRO SE LITIGANTS IN COURTS OF THE UNITED STATES, WHICH IS OF NATIONAL IMPORTANCE.

Respondent's quibble (Opp. Br. 25) about petitioners rights according to law as a pro se litigant. The rights of self-representation were established centuries ago and remain intact today. The history of our court system in this country reflects why pro se litigant's rights are so important in litigation.

"One of the main reasons that the colonists fled to America was because of the corrupt court system in England, and the justices of the king's court who were twisting the laws to secure convictions.

This prejudice gained strength in the original colonies, where distrust of lawyers became an institution. Several colonies prohibited pleading for hire in the 17th Century.

The years of revolution and confederation saw an upsurge of anti-lawyers sentiment, a sudden revival, after the war of the revolution, of the old dislikes and distrusts of lawyers as a class. In the heat of these sentiments the Constitution was forged." See *Faretta v. California*, 422 U.S. 806 (1975)

The United States Courts of Appeals have repeatedly held that the right of self-representation is protected by the Bill of Rights. The right of self-representation has its roots in the Sixth Amendment. This Honorable Court has ruled many times that a Pro Se litigant is entitled to special consideration in their pleadings.

But, yet the United States Court of Appeals for the 9th Circuit and the United States District Court failed to follow this precedent when reaching a decision in this petitioner's case.

This Honorable Court should decide conclusively the rights of pro se litigants and insure that the lower courts heed this mandate by the Supreme Court of the United States. The United States Court of Appeals for the Ninth Circuit and the United States District Court Eastern District of California failed to heed this mandate in dismissing petitioner's complaint without leave to amend. Based on this violation of the law this Honorable Court should grant petitioner's Writ of Certiorari.

IV. PROPERTY OF PETITIONER'S BANKRUPTCY ESTATE AND DURATION

"Upon the filing of a Bankruptcy Petition an Estate is created comprising all legal or equitable interests of the debtor and property as of commencement of the case." See

United States v. Whitin Pools Incorporated 462 U.S. 198 (1983).

This jurisdiction is broad and plenary and cannot be infringed upon by proceedings in another court. The original jurisdiction of the reorganization court is superior to that of any other court as a result of the Bankruptcy Act and the Supremacy Clause of Article VI of the Constitution.

Moreover, where a court of competent jurisdiction has, through its officers, taken property into its possession the property is thereby withdrawn from the jurisdiction of other courts. In Re: *Chicago*, 738 F.2d 209 (7th Cir. 1984)

A. Property of William J. Prater's Bankruptcy Estate

When this petitioner filed a Bankruptcy Petition in the United States Bankruptcy Court Eastern District of California his estate was comprised of five different parcels of real property, cash and other assets.

B. Respondent half-heartedly attempts to convince this court that the only parcel of property in question was the Clipper Mills Property.

Respondent readily admits that they filed on April 25, 2002 a complaint in Butte County Superior Court for quiet title to an easement, interference with easement, and intentional interference with equitable advantage. This complaint seeks over one million dollars in damages from several senior citizen defendants. Of course, this lawsuit concerned all the property of the Bankruptcy Estate of William J. Prater not just the Clipper Mills property as alleged in their pleadings.

C. The Settlement Agreement, the Motion to Abandon, Duration of Property of the Estate